IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9462 of 2000
With
SPECIAL CIVIL APPLICATION No. 9463 of 2000
To
SPECIAL CIVIL APPLICATION No. 9466 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHITAL GROUP GRAM PANCHAYAT - Petitioner(s)
Versus
BHARATBHAI CHHAGANBHAI JETHWA - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner
MR GM JOSHI for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/08/2007

ORAL JUDGMENT

Shri H.S. Munshaw, learned counsel for the

petitioner in all the writ applications; Shri G.M. Joshi, learned counsel for the respondent in all the writ applications.

2. From the records, it appears that during pendency of the Demand Case No. 53/98 LCA [LCB] No. 3/97, Industrial Dispute Complaints No. 61/98, 62/98, 63/98, 69/98 and 70/98 [Amreli] came to be filed with a statement that during pendency of the Demand Case wherein each of the workman had claimed regularization, present petitioner-employer has removed each of the workman from the services without observing the provisions of the Industrial Disputes Act, or even without obtaining permission under Section 33 of the Industrial Disputes Act, 1947.

3. Case of each of the workman was that they were working as Sweepers on the tractors employed by the present petitioner for the purpose of collection of garbage. After the tractors were sent for repairs, each of the workman came to be removed and thereafter they were not re-employed. The present petitioner, after notice appeared in the complaint cases and submitted

that as there was no work, daily wagers could not be continued. It was also submitted that as a mater of fact, each of the workman had abandoned the services.

4. After recording the evidence and hearing the parties, the learned Labour Court observed that each of the workman had worked for more than 240 days in 12 calendar months preceding the date of removal and that present was not a case of abandonment of service but was a case of illegal removal/retrenchment. The Court below accordingly allowed each of the complaint, directed reinstatement of each of the workman with 100% back wages and other benefits flowing from the services. Being aggrieved by the said award passed in the above mentioned five complaints, the employer Chital Gram Panchayat Group filed these writ applications.

5. After taking me through the documents and the findings recorded by the learned Labour Court, Shri Munshaw, learned counsel for the petitioner submitted that the Court below was unjustified in holding that the workman did not abandon the

services. According to him, present petitioner had come out with a specific case and proved their case that each of the workman abandoned the services. Shri G.M. Joshi, learned counsel for each of the respondent, however, submitted that the finding recorded by the Court below is based on appreciation of evidence and as the finding is supported by the evidence available on the records, this Court may refuse to interfere under Article 227 of the Constitution of India.

6. From the discussions made in the order passed by the learned Labour Court, it would clearly appear that it has given its thoughtful consideration to the evidence available on the records and has recorded a positive finding in favour of the workmen. The finding cannot be termed as perverse nor can it be said that no evidence is available on the records to support the said finding. High Court in its jurisdiction under Article 227 of the Constitution shall not reappreciate the entire evidence simply because another view is possible. I refuse to interfere

in the findings recorded by the learned Court below.

7. Shri Munshaw next contended that in case of a daily wager and a person who is entitled to wages on allotment of the work, 100% back wages could not have been awarded. He also submitted that daily wager would not be entitled to other service benefits except his reinstatement and, as in this matter, demand case is pending consideration, the Court below could not pre-judge the entire issue. Shri Joshi, learned counsel for the respondent, on the other hand, submitted that the workmen were ready and willing to work but they were not given any work and therefore, their removal was patently illegal and grant of 100% back wages in the special circumstances of the case cannot be termed to be bad.

8. It would be trite to say that a daily wager who is in the list prepared by the employer is entitled to work provided the work is available. A daily wager cannot say that he is entitled to work for all the 30 days a month except national

holidays or other holidays. Availability of the work if is the first and foremost requirement to give work to a daily wager, then, the Court cannot direct 100% back wages in favour of the workman who was illegally retrenched and is ordered to be reinstated. Rights of a daily wager if he worked for 240 days as a workman would also be limited that he shall not be removed except in accordance with law. In the present case, the Court below was unjustified in directing that the present petitioner should extend all the service benefits in favour of the present respondent-daily wagers. The Court below was also unjustified in not taking into consideration that the demand case, at the instance of each of the workman was pending consideration and the issue relating to regularization and other benefits etc. will have to be decided in the said case.

9. Taking into consideration the above, I will modify the award with the direction that each of the respondent is entitled to reinstatement with 50% back wages from the date of their

removal till the date of the Reference.

10. The petitions to the extent indicated above are allowed. Rule is made absolute in each of the petition to the above extent. No costs.

[R.S. GARG, J.]

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